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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 2008-214

11 BRIAN O'DEA
12 1326 The Alameda, Apt. 167
San Jose, CA 95126

A C C U S A T I O N

13 Registered Nurse License No. 306825

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about September 30, 1979, the Board of Registered Nursing issued
22 Registered Nurse License No. 306825 to Brian O'Dea (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2008, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Registered Nursing
27 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 2750 of the Code provides, in pertinent part, that the Board may
2 discipline any licensee, including a licensee holding a temporary or an inactive license, for any
3 reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Section 2764 of the Code provides, in pertinent part, that the expiration of
5 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
6 against the licensee or to render a decision imposing discipline on the license.

7 STATUTORY PROVISIONS

8 6. Section 2761 of the Code provides, in pertinent part, that the Board may
9 take disciplinary action against a certified or licensed nurse for any of the following:

10 (a) Unprofessional conduct, including but not limited to incompetence or gross
11 negligence in carrying out usual certified or licensed nursing functions; and/or

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record of the
14 conviction shall be conclusive evidence thereof.

15 7. California Code of Regulations, title 16, section 1442, provides that as
16 used in section 2761, "gross negligence" includes an extreme departure from the standard of care
17 which, under similar circumstances, would ordinarily have been exercised by a competent
18 registered nurse. Such an extreme departure means the repeated failure to provide nursing care as
19 required or failure to provide care or to exercise ordinary precaution in a single situation which
20 the nurse knew, or should have known, could have jeopardized the client's health or life.

21 8. California Code of Regulations, title 16, section 1443, provides that as
22 used in section 2761, "incompetence" means the lack of possession of or the failure to exercise
23 that degree of learning, skill, care and experience ordinarily possessed and exercised by a
24 competent registered nurse as described in Section 1443.5.

25 9. California Code of Regulations, title 16, section 1444 provides that a
26 conviction or act shall be considered substantially related to the qualifications, functions or duties
27 of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a
28 registered nurse to practice in a manner consistent with the public health, safety, or welfare.

1 10. Section 2762 of the Code provides, in pertinent part, that in addition to
2 other acts constituting unprofessional conduct, it is unprofessional conduct for a nurse to:

3 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a
4 licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish
5 or administer to another, any controlled substance or any dangerous drug or dangerous device.

6 (b) Use any controlled substance or any dangerous drug or dangerous device, or
7 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any
8 other person, or the public or to the extent that such use impairs his or her ability to conduct with
9 safety to the public the practice authorized by his or her license.

10 (c) Be convicted of a criminal offense involving the prescription, consumption, or
11 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
12 or possession of, or falsification of a record pertaining to, the substances described in subdivision
13 (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

14 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
15 entries in any hospital, patient, or other record pertaining to the substances described in
16 subdivision (a) of this section

17 11. Section 4060 of the Code provides, in pertinent part, that no person shall
18 possess any controlled substance, except that furnished to a person upon the prescription of a
19 physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a
20 certified nurse-midwife, a nurse practitioner, or a physician assistant.

21 12. Health and Safety Code section 11173, subdivision (a), provides that no
22 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure
23 the administration of or prescription for controlled substances, (1) by fraud, deceit,
24 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

25 13. Health and Safety Code section 11350, in pertinent part, makes it unlawful
26 for a person to possess any controlled substance specified in section 11055(b), or any controlled
27 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon a written
28 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state.

1 14. Section 125.3 of the Code provides, in pertinent part, that the Board may
2 request the administrative law judge to direct a licensee found to have committed a violation of
3 the licensing act to pay a sum not to exceed reasonable costs of investigation and enforcement.

4 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

5 15. Section 4021 of the Code states:

6 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing
7 with Section 11053) of Division 10 of the Health and Safety Code.”

8 16. Section 4022 of the Code states, in pertinent part:

9 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for
10 self-use, except veterinary drugs that are labeled as such, and includes the following:

11 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing
12 without prescription,’ ‘Rx only,’ or words of similar import.

13 ...

14 “(c) Any other drug or device that by federal or state law can be lawfully
15 dispensed only on prescription or furnished pursuant to Section 4006.”

16 17. **Morphine** is a Schedule II controlled substance as designated by Health
17 and Safety Code section 11055(b)(1)(M) and a dangerous drug as designated by Business and
18 Professions Code section 4022. It is a narcotic analgesic drug.

19 18. **Fentanyl** is a Schedule II controlled substance as designated by Health and
20 Safety Code section 11055(c)(8) and a dangerous drug as designated by Business and Professions
21 Code section 4022. It is a narcotic analgesic drug, often delivered in a **Duragesic** brand patch.

22 19. **Dilaudid** is a brand name for **hydromorphone**, a Schedule II controlled
23 substance as designated by Health and Safety Code section 11055(b)(1)(K) and a dangerous drug
24 as designated by Business and Professions Code section 4022. It is a narcotic analgesic drug.

25 FACTUAL BACKGROUND

26 20. Between in or about April 2003 and in or about January 2005, Respondent
27 was employed, first as a staff nurse and then as Assistant Nurse Manager, in the Cardiovascular
28 Intensive Care Unit, at Good Samaritan Hospital in San Jose, CA.

21. By December 2004, the hospital employed an Acudose-Rx secure cabinet system for controlled substance/dangerous drug storage and distribution, which required a login and password for access to the cabinet and acquisition of controlled substances/dangerous drugs. Respondent was given a login and password for the Acudose-Rx cabinet system.

22. On several separate occasions in December 2004 and January 2005, while on duty at Good Samaritan Hospital, Respondent took advantage of/manipulated his access to the Acudose-Rx system to divert, for his own use and without prescriber authorization, quantities of **Morphine**, **Fentanyl**, and **hydromorphone (Dilaudid)**. The total number of diversions and the total quantities of drugs diverted are unknown, but consist of at least 18 separate illegitimate uses of the Acudose-Rx system between December 24, 2004 and January 5, 2005, and diversion of at least 20 mg **Morphine**, 3000 mcg **Fentanyl**, and 2 mg **hydromorphone (Dilaudid)**.

23. Respondent admitted to self-administering the diverted medications, and to suffering from an addiction to narcotics. He stated that **Morphine** was his drug of choice, but that he would divert and use **Fentanyl** if he was not able to acquire **Morphine**.

FIRST CAUSE FOR DISCIPLINE

(Unlawful Conduct Re: Controlled Substances/Dangerous Drugs)

24. Respondent is subject to disciplinary action under section 2761(a), 2762(a) and/or 4060 of the Code and/or Health and Safety Code section 11350(a) in that, as described in paragraphs 20-23 above, between December 2004 and January 2005, Respondent unlawfully possessed and/or self-administered **Morphine, Fentanyl, and/or hydromorphone (Dilaudid)**.

SECOND CAUSE FOR DISCIPLINE

(Dangerous/Impairing Use of Controlled Substances/Dangerous Drugs)

25. Respondent is subject to disciplinary action under section 2761(a) and/or 2762(b) of the Code in that, as described in paragraphs 20-23 above, between December 2004 and January 2005, Respondent used one or more controlled substances and/or dangerous drugs including **Morphine, Fentanyl, and/or hydromorphone (Dilaudid)** to an extent or in a manner dangerous or injurious to himself, any other person, or the public or to the extent that such use impaired his ability to conduct with safety the practice authorized by his license.

1 THIRD CAUSE FOR DISCIPLINE

2 (Manipulation of Patient Records re: Controlled Substances/Dangerous Drugs)

3 26. Respondent is subject to disciplinary action under section 2761(a) and/or
4 2762(e) of the Code in that, as described in paragraphs 20-23 above, between December 2004
5 and January 2005, Respondent falsified, or made grossly incorrect, grossly inconsistent, or
6 unintelligible entries in any hospital, patient, or other record pertaining to controlled substances
7 and/or dangerous drugs, including **Morphine, Fentanyl, and/or hydromorphone (Dilaudid)**.

8 FOURTH CAUSE FOR DISCIPLINE

9 (Acquisition of Controlled Substances/Dangerous Drugs by Fraud or Deceit)

10 27. Respondent is subject to disciplinary action under section 2761(a) and/or
11 2762(b) of the Code, and/or Health and Safety Code section 11173(a) in that, as described in
12 paragraphs 20-23 above, between December 2004 and January 2005, Respondent obtained or
13 attempted to obtain **Morphine, Fentanyl, and/or hydromorphone (Dilaudid)**, by fraud, deceit,
14 misrepresentation, or subterfuge, or by the concealment of a material fact.

15 FIFTH CAUSE FOR DISCIPLINE

16 (Gross Negligence or Incompetence)

17 28. Respondent is subject to disciplinary action under section 2761(a)(1) of
18 the Code for gross negligence and/or incompetence as defined in California Code of Regulations,
19 title 16, sections 1442, 1443, and 1443.5 in that, as described in paragraphs 20-27 above, in or
20 about December 2004 and/or January 2005, while employed as a nurse, Respondent diverted for
21 self-use, and/or unlawfully possessed and self-administered controlled substances and dangerous
22 drugs **Morphine, Fentanyl, and/or hydromorphone (Dilaudid)**, conduct constituting gross
23 negligence and/or incompetence for a registered nurse.

24 PRAYER

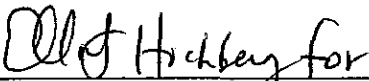
25 WHEREFORE, Complainant requests that a hearing be held on the matters herein
26 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

27 A. Revoking or suspending Registered Nurse License No. 306825, issued to
28 Brian O'Dea (Respondent);

1 B. Ordering Respondent to pay the Board reasonable costs of investigation
2 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3 C. Taking such other and further action as is deemed necessary and proper.
4

5 DATED: 1/18/08
6

7 
8 RUTH ANN TERRY, M.P.H., R.N.
9 Executive Officer
10 Board of Registered Nursing
11 Department of Consumer Affairs
12 State of California
13 Complainant

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